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JUN 10 2002

OFFICE OF PETITIONS

In re Application of
K. Gifford Goodhue, Jr., et al.
Application No. 09/880,409
Filed: June 13, 2001
Attorney Docket No.
11084.0015.CPUS00GOOD015

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

RECEIVED

DEC 13 2002

OFFICE OF PETITIONS

This is in response to the petition under 37 CFR 1.47(b), filed February 8, 2002, which has been treated as a petition under 37 CFR 1.47(a).¹

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)." and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 13, 2001, without an executed oath or declaration and naming K. Gifford Goodhue, Jr., Max M. Holmes, Clinton Scott Norman and John M. Wilkerson, III.

Accordingly, on July 9, 2001, a "Notice To File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for their late filing. A two month period for reply was set.

In response, on February 8, 2002, the instant petition and authorization to charge counsel's credit card in the amount of \$2,250 for the surcharge, the petition fee and a five month extension of time fee², statements in support of a petition under 37 CFR 1.47 (b) by K. Gifford Goodhue, Jr. and Robert Jennejahn, accompanied by the last known address of Max M. Holmes.

¹A petition under 37 CFR 1.47(b) is inappropriate in this instance since all but one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign, accordingly the petition will be treated as a petition under 37 CFR 1.47(a).

²Petitioner's deposit account no. 01-2508 will be credited in the amount of \$30.00. (\$1960 extension of time fee, \$130 surcharge, \$130 37 CFR 1.47 petition fee)

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

As to item (1), applicant appears to demonstrate that a package containing a declaration and an assignment was mailed to Mr. Holmes by certified mail. The evidence further points to the fact that the package was mailed to but not accepted by Mr. Holmes as is shown by the package being returned by the united states postal service.

The package was sent to the last known address but Mr. Holmes refused acceptance of the package, which is tantamount to a refusal to sign the oath or declaration. However, unless Mr. Holmes was presented with a copy of the application papers (specification, claims and drawings), Mr. Holmes could not attest that he has "reviewed and understands the application papers" and therefore could not sign the declaration which he was given. Accordingly, Rule 47 applicant failed to show or provide proof that the inventor has refused to sign the declaration. Did the inventor receive the application papers? See Manual of Patent Examining Procedure, Section 409.03(d). Petitioner should show that a copy of the application papers was presented to the inventor, but that he did not respond to the request that he sign the oath/declaration in order to show that the inventor has refused to join in the application. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



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